

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD HOFFMAN,	:	
Plaintiff,	:	
v.	:	CIVIL ACTION NO. 3:CV-06-1656
SUPERINTENDENT MARDI	:	(JUDGE KOSIK)
VENCENT, LT. N.R. HOFFMAN,	:	
LPN BALDWIN and	:	
HEARING EXAMINER,	:	
Defendants.	:	

## **MEMORANDUM AND ORDER**

AND NOW, THIS 28<sup>th</sup> DAY OF SEPTEMBER, 2006, IT APPEARING TO THE  
COURT THAT:

[1] On August 23, 2006, plaintiff filed the above-captioned action pursuant to 42 U.S.C. § 1983, against the above defendants;

[2] plaintiff is presently incarcerated at State Correctional Institution at Laurel Highlands, Pennsylvania (“SCI Laurel Highlands”), and all of the defendants are employed there;

[3] the matter was assigned to United States Magistrate Judge J. Andrew Smyser;

[4] the plaintiff's complaint asserts that: (1) defendant, LPN Baldwin withheld necessary medical care and verbally abused the plaintiff; (2) defendant, Lt. Hoffman, issued a false misconduct report in retaliation for the plaintiff's filing a complaint against defendant, LPN Baldwin; (3) defendant, Superintendent Vincent, approved the staff members' conduct; and, (4) the defendant identified only as a hearing examiner, upheld "the policy that witnesses are not necessary

to prove innonc or guilt where charges are brought against officers and of staff;" and "conducted a KANGROO COURT" (Doc. 1);

[5] the complaint requests various sums in damages against each defendant;

[6] the plaintiff did not submit the filling fee or properly complete the forms required to proceed *in forma pauperis*;

[7] on September 1, 2006, the Clerk of Court forwarded the plaintiff the correct *in forma pauperis* form and authorization form and entered an administrative order informing the plaintiff that the case would be dismissed without prejudice unless he paid the \$350.00 filing fee or filed a properly completed application to proceed *in forma pauperis* (Doc. 4);

[8] by letter of September 13, 2006, the plaintiff indicated that he would not assent to payment and requested his complaint to be returned (Doc. 5);

[9] Magistrate Judge Smyser filed a Report and Recommendation on September 19, 2006, suggesting that the plaintiff's complaint be dismissed without prejudice due to the fact that plaintiff had requested the return of his complaint (Doc. 6);

[10] on September 27, 2006, the Plaintiff filed objections to the Report and Recommendation;

[11] the plaintiff's objections contained no argument and the brief in support stated only, "Petitioner file this motion pursuant to Rule 55(a) Fed.R.Civ.P. to further seek some assistance to address said case matter, for reason thatfor of future and / or searious consequences. Petitioner pray that this Honorable Court

will consider this motion and grant him theurangent and necessary time to seek further assistance" (Doc. 7);

[12] to date, the plaintiff has neither filed a properly completed application to proceed *in forma pauperis*, nor paid the \$350.00 filing fee;

IT FURTHER APPEARING THAT:

[13] when objections are filed to a Report and Recommendation of a Magistrate Judge, we must make a *de novo* determination of those portions of the report to which objections are made. 28 U.S.C. §636(b)(1); see *Sample v. Diecks*, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989). In doing so we may accept, reject or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. §636(b)(1); Local Rule 72.3. Although our review is *de novo*, we are permitted to rely upon the Magistrate Judge's proposed recommendations to the extent we, in the exercise of sound discretion, deem proper. *United States v. Raddatz*, 447 U.S. 667, 676 (1980);

[14] having examined the Magistrate Judge's Report and Recommendation and the plaintiff's objections, we agree with the Magistrate Judge's recommendations;

[15] plaintiff requested that his complaint be returned, failed to pay the appropriate filing fee or file a properly completed application to proceed *in forma pauperis*, and provided no evidence of his intention to pay the filing fee or complete the appropriate forms in his objections to the Report and Recommendation;

[16] we agree with the Magistrate Judge's conclusion that the plaintiff's

complaint should be dismissed without prejudice.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

- [1] the Report and Recommendation of Magistrate Judge J. Andrew Smyser dated September 19, 2006, (Doc. 6) is **adopted**;
- [2] the plaintiff's complaint is **dismissed without prejudice**;
- [3] plaintiff may re-file the complaint with the appropriate filing fee or a properly completed application to proceed *in forma pauperis*;
- [4] the Clerk of Court is directed to close this case, and forward a copy of this Memorandum and Order to the Magistrate Judge.

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s/Edwin M. Kosik  
United States District Judge